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Agency Finds Lag in Laws to Bar Abuse of Electronic Surveillance

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WASHINGTON, Oct. 23 — The Government's ability to keep track of people has become much more effective in the last two decades, but "the law has not kept pace with these changes," according to a nonpartisan Congressional research agency.

In a report on electronic surveillance and civil liberties, the Office of Technology said it had identified 85 separate computerized record systems used for law-enforcement, investigative and intelligence purposes, with a total of 288 million records concerning 114 million people.

For security reasons, the Office of Technology did not request any information from the Central Intelligence Agency and the National Security Agency, the two Federal agencies believed to be most heavily engaged in electronic and other kinds of surveillance on a worldwide basis.

The report said there had been "a virtual revolution in the technology relevant to electronic surveillance" in the last 20 years, citing "advances in electronics, semiconductors, computers, imaging, data bases and related technologies."

For example, the report said, a helicopter flying at 6,000 feet can track over a 250-mile radius the radio signals sent by a small electronic beeper attached to a car.

A broad survey of 142 Federal agencies found one-fourth of them conducting some kind of electronic surveillance. The Drug Enforcement Administration was using 10 separate surveillance technologies, and the Federal Bureau of Investigation was using or soon planned to use 17, the report said. The Park Service uses eight, the Internal Revenue Service seven and the Fish and Wildlife Service six.

The Technology Office said its survey of Federal agencies had found wide use of miniaturized closed-circuit television cameras, special night vision devices, electronic beepers and sensors to track cars and people, and equipment to maintain a complete record of all calls dialed from a targeted telephone.

The report is scheduled to be released Thursday at a hearing of the House Judiciary Committee's Subcommittee on Courts, Civil Liberties and Administration of Justice, headed by Representative Robert W. Kastenmeier, Democrat of Wisconsin. The study on which the report is based was requested more than a year ago by Mr. Kastenmeier and Senator William V. Roth Jr., Republican of Delaware.

The Technology Office said that its review of existing statutes and court opinions found that the law "does not adequately cover new and emerging electronic surveillance technologies."

The report said the use of electronic surveillance devices might result in more efficient law enforcement and may be required by the more evasive techniques used by those suspected of criminal activities. "Yet, the cumulative impact of the increased use of surveillance, with or without a court order, is an important consideration for any society that prides itself on limited government and individual freedom," the report added.

Among the gaps the Technology Office said it found in the current surveillance law were these:

¶ Because of a quirk in the 1968 wiretap law, the contents of phone conversations that are transmitted in computerized form by way of microwave towers or satellites, and conversations conducted over cellular mobile telephones or cordless telephones "are not clearly protected by existing statutes."

¶ As computerized "electronic mail" is transmitted between corporations and among individuals, it moves through several stages in which the contents are subject to easy interception. "Existing law offers little or no protection at most of these stages," the report said.

¶ Laws establishing policy on physical electronic surveillance by the use of hidden beepers or electronic visual surveillance by closed-circuit television are "ambiguous or nonexistent."

¶ The legal framework for the Government's surveillance of national computer data bases is "unclear."

The report said Congress could choose not to develop new legal guidelines for electronic surveillance, thus leaving the policy decisions to the courts and Government officials. But it said this choice would continue the existing confusion and uncertainties.

An alternative would be for Congress to approve legislation to bring Federal law up to date with surveillance technology. In this regard, Mr. Kastenmeier and Senator Patrick J. Leahy, Democrat of Vermont, recently introduced legislation that would provide such computerized information as electronic mail the same kind of legal protection now provided a first-class letter.

Mr. Kastenmeier has also introduced a bill that would require law-enforcement officials to obtain a court order before installing closed-circuit television cameras.